IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 222 of 1993

with

SPECIAL CIVIL APPLICATION No 304 of 1993

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI A PATEL

Versus

DY. COLLECTOR

Appearance:

1. Special Civil Application No. 222 of 1993

MR BS PATEL for Petitioner

MR ARUN H MEHTA for Respondent No. 1, 2

2. Special Civil ApplicationNo 304 of 1993

MR BS PATEL for Petitioner

MR ARUN H MEHTA for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 24/04/2001

ORAL JUDGEMENT

1. These are petitions under Article 227 read with Article 226 of the Constitution of India by two separate petitioners, who challenge almost identical orders passed by the Debt Recovery Officer under the provisions of the Gujarat Agricultural Credit (Provision of Facilities) Act, 1979.

2. Each of the petitioners in the two petitions herein had taken a loan for agricultural purposes from Central Bank of India, Siddhpur Branch, against hypothecation/security as required by the bank. These loans were taken, in the first petition on 8th December 1980 and in the second petition on 29th November 1983. However, it was only in the year 1992 that the first respondent started recovery proceedings, purporting to act under section 11 read with rule 8 of the aforesaid Act. The said Debt Recovery Officer issued the impugned show-cause notices at Annexures C and D in the first petition and Annexure-B in the second petition.

3. The petitioners have approached this Court challenging the issuance of the said notice on a number of grounds including the ground that such a show-cause notice has been issued beyond the period of limitation, and that the officer who has issued the impugned notices had no jurisdiction to initiate the action proposed to be taken under the said Act, that principles of natural justice were violated inasmuch as the application by the creditor bank at whose instance the proceedings have been initiated has not been furnished to the petitioners (as asserted in the show-cause notice), etc. The first question which requires to be addressed and which goes to the root of the matter is as regards the jurisdiction of the officer who has issued the impugned show-cause notices in each of the petitions.

4. There is no controversy that the show-cause notices in question have been issued in the purported exercise of power under section 11 read with rule 8 of the said Act.

5. In the context of the jurisdictional issue, it is contended that each of the impugned show-cause notices in each of the petitions have been issued by the Debt Recovery Officer, Dena Bank, whereas the loan had been taken from Central Bank of India. It would prima facie appear that there is some substance in the contention raised herein. Learned counsel for the respondent,

however, submits that the Debt Recovery Officer for Dena Bank, as also for Central Bank of India, as also for many other nationalised banks, is the very same officer who performs the same statutory function under the said Act. This explanation offered by learned counsel for the respondent, however, is an oral explanation which does not find support from any affidavit in reply. Moreover, if the very same officer has been conferred jurisdiction to function as a Debt Recovery Officer, as contemplated by the said Act, the appointment, the powers conferred upon the appointee in respect of those banks on behalf of whom the designated officer can take action would depend upon the jurisdiction conferred upon the concerned officer, either by the appointment order or by a notification issued by the appropriate authority or by any other statutory mode of conferment of power. This, however, is a moot question which cannot be answered or dealt with by this court in the present proceedings inasmuch as the same requires investigation into the facts of the two cases before the court.

6. In this context, as a result of the hearing and discussion a consensus was arrived at between the learned counsel for the respective parties on the basis of which it is directed that each of the petitioners shall file their reply before the concerned officer within two months from today. In the said reply the petitioners may raise all factual and legal contentions which they wish to raise. If the petitioners raise any contention as to jurisdiction of the officer to issue the show-cause notice in question, the concerned officer shall decide the same with reference to the source of his authority or power. This decision shall be recorded by the concerned officer by way of a speaking order dealing with all contentions raised by the petitioners. It is understood that during the course of proceedings initiated by the impugned show-cause notice, the petitioner shall also be entitled to a hearing, and shall be supplied with copies of documents upon which the concerned officer may wish to rely upon.

7. It is further clarified that in case any order adverse to the petitioner is passed as a result of the hearing of the show-cause notice, the same shall not be implemented for two weeks after the order is communicated to the petitioners herein.

8. These petitions are accordingly disposed of. Rule is partly made absolute to the aforesaid extent with no order as to costs.

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